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2 **THE COUNTERS FIRM, P.C.**

3 Representation you can count on.

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11 **IN THE UNITED STATES DISTRICT COURT**
12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 Kathleen Grant,

14 Plaintiff,

Case No. :

15 vs.

COMPLAINT

16 Life Insurance Company of North
17 America, a foreign insurer, Banner Health,
18 Inc., Long Term Disability Plan of Banner
19 Health, Inc., Banner Plan Administration,
20 and Banner Health & Welfare Committee,

21 Defendants.

22 For her claim against Defendants, Kathleen Grant ("Grant") alleges as follows:

23 **PARTIES**

- 24 1. Grant is a resident of Maricopa County, Arizona.
- 25 2. Defendant Banner Health, Inc. ("Banner") is an Arizona corporation. Banner
26 is the Plan Sponsor, Plan Administrator of the Plan.
- 27 3. Defendant Banner Long-Term Disability Plan ("Plan") is a purported ERISA
28 benefit plan established and maintained by Banner for the benefit of its employees.
4. Banner Plan Administration ("BPA") is a claim administrator appointed by
Defendant Banner Health & Welfare Committee ("BHWC") to administer and determine
benefit claims and is a plan administrator.

1 15. Prior to becoming disabled, Grant was a transplant nurse for Banner.

2 16. Banner paid LTD benefits to Grant from 1999 to November 13, 2008.

3 17. In January of 2009, the Plan became known as the Banner Health Long-Term
4 Disability (LTD) Plan.

5 18. The terms of the Plan in 2009, when Grant started receiving benefits paid
6 benefits if Grant has been disabled for 182 days and if she suffers from an injury or sickness
7 of permanent or long continued duration, which, directly and independently of all other
8 causes, disables her so that she is completely prevented from engaging in any occupation or
9 employment for which she is fit by reason of experience, training, or education.

10 19. Grant exhausted her administrative remedies and filed suit in Arizona District
11 Court, Case no. 2:10-cv-01933 against Banner Health Long-Term Disability Plan, BHWC,
12 and BPA to recover unpaid plan benefits. The parties settled the dispute out of court, and the
13 case was dismissed in May 2011.

14 20. The settlement included returning Grant to an active claim and she began to
15 receive benefits again.

16 21. As part of the transition from self-funded to fully-insured, Banner purchased a
17 Self-Funded Disability Terminal Liability Policy ("Terminal Policy").

18 22. The Terminal Policy purports to cover any employee who is disabled as of the
19 date of the Terminal Policy under the terms of the 2012 Summary Plan Description ("2012
20 SPD").

21 23. On information and belief, in 2012, Banner ceased self-funding its LTD
22 benefits and the Plan became fully-insured by Defendant LINA.

23 24. For employees, including Grant that were already receiving benefits under the
24 Plan, LINA offers a Claim Reserve Buy-out Program ("RBO Program").

25 25. LINA advertises that the RBO program provides benefits for employers,
26 including the ability to pay one lump sum to buyout the existing risk, tax advantages, and the
27 ability of the employer to avoid employee benefit claim lawsuits.

28 26.

1 48. Failure of the Plan Administrator to provide plan documents within 30 days
2 under 29 U.S.C. 1132(c)(1)(B) exposes the Plan Administrator to a penalty of up to \$110 per
3 day from the date of the failure to provide documents.

4 49. Banner and BPA are Plan Administrators.

5 50. On January 28, 2014, Grant requested copies of all documents, records, and
6 other information relating to the plan.

7 51. Banner did not provide any plan documents for the Samaritan Plan.

8 52. The language of the SPD for the Banner LTD Plan disclosed by Banner
9 specifically states that “[it] is not the insurance contract. It does not waive or alter any of the
10 terms of the policy. If questions arise, the Policy will govern. [Participants and beneficiaries]
11 may examine the Policy at the office of the Policyholder or the Administrator.”

12 53. Banner did not disclose the policy instrument referred to in the SPD for the
13 Banner LTD Plan.

14 54. Banner attached an exhibit page to the 2012 Plan document it disclosed stating
15 “Exhibit A is 2012 SPD,” but Banner did not provide the SPD.

16 55. Banner therefore failed to disclose the Samaritan Plan’s policy document, the
17 Banner LTD Plan policy document, and the 2012 Plan’s SPD the in violation of 29 U.S.C.
18 1132(c)(1)(B).

19 WHEREFORE, Grant prays for entry of judgment against Defendants as follows:

- 20 A. For all past and future benefits due to Grant;
- 21 B. For general and special damages arising from LINA’s violation of ERISA
22 29 U.S.C. § 1104(a)(1);
- 23 C. For judgment awarding Grant \$110 per day for each day beyond 30 that
24 Banner failed to provide Grant with complete copies of the plan document;
- 25 D. A declaration of what plan document or plan documents govern Grant’s
26 disability;
- 27 E. Clarifying and determining Grant’s rights to future benefits under the terms
28 of the Plan that apply to Grant;

- 1 F. For an award of Grant's attorneys' fees and costs incurred herein;
2 G. For an award of prejudgment interest on benefits and damages at the highest
3 legal rate until paid; and
4 H. For such other and further relief as the Court deems just and reasonable.

5 Dated: December 29, 2015.

6 THE COUNTERS FIRM, P.C.
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9 By: /s/ Lisa J. Counters
10 Lisa Counters
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